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SIPDIS

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SUBJECT: CHIEF JUSTICE ON JUDICIAL CHALLENGES, MINISTRY OF
JUSTICE RIVALRY

Classified By: Acting Principal Officer Greg Marchese
for reasons 1.4 (b,d).

¶1. (C) Summary: In a September 2 meeting, Chief Justice Issa Abu Sharar discussed recent improvements in the Palestinian judicial sector, and the challenge of recruiting qualified judges. He praised Prime Minister Fayyad's support for enforcement of High Court orders and was critical of what he portrayed as the Minister of Justice's attempts to usurp authority from an independent judiciary. Abu Sharar said he is scheduled to step down from his position on November 28, when he reaches the mandatory retirement age. End summary.

Progress Under Fayyad; Recruitment a Challenge

¶2. (C) In a September 2 meeting at the High Court in Ramallah, Chief Justice Issa Abu Sharar noted significant improvement in the Palestinian judicial sector since PM Salam Fayyad took office in 2007, saying that, with the assistance of international donors, the Judicial Council has successfully installed new offices for court management, judicial inspection, planning and project management, training directorates, and a legal research unit. "The number of incoming cases is going up," he said. "And there are two reasons for that. First, the improvement in the security performance. Second, there is enhanced trust. USAID-funded polling shows that 77% of people express trust in the judicial sector."

¶3. (C) "There's good progress underway in the justice sector," Abu Sharar said, "but we continue to face obstacles...the only resource we have for the recruitment of judges is the (existing) pool of lawyers...there are not enough. Also, we don't have a significant accumulation of expertise in the judiciary. He went on to say, "today, the President and the Prime Minister support the judiciary and promote our independence. This is our first experience of what we call a new Palestinian judicial sector."

Prime Minister Advocates Enforcement of Judicial Orders

¶4. (C) Abu Sharar noted that PM Fayyad's support was evident in an August 31 meeting with senior judiciary in Ramallah. There, Fayyad said that the Palestinian Authority was determined to execute all pending High Court judicial orders. The most pressing unenforced orders, Abu Sharar said, concerned a number of Hamas-affiliated prisoners held by PA security services on the basis of military court orders but subject to release orders by the High Court. (Note: In many of these cases, the security services have taken no action to date on the High Court's ruling. End Note.)

¶15. (C) Abu Sharar argued that the structure of the Palestinian justice system was imperfectly understood by the international donor community as well as its own members. "You have different systems around the world," he said. "In some European systems, the Minister of Justice (MoJ) has authority over the judiciary, and so some European donors think the situation here needs to be the same. They talk about stakeholders, and how we need to give powers to the MoJ. We (the judiciary) reject this. Here, the MoJ has no mandate and authority. Their own interest is to achieve hegemony, and control. But in our view, justice is achieved through the courts, not through bureaucracy."

¶16. (C) Abu Sharar was dismissive of the relevance of a justice sector committee formed under the leadership of Presidential advisor Rafiq Husseini in response to two recent letters to Abu Mazen from the Dutch-led Justice Sector Working Group (JSWG). (Note: the donor letters, sent on April 15 and June 30 from JSWG Chair Pim Dunmore, expressed concern about the lack of "a clear delineation of roles, competencies, and duties amongst the main institutions within the justice sector." Husseini responded to Abu Mazen in a letter passed to the donor community on July 24, recommending identification of coordination mechanisms in the justice sector, as well as "ban(ning) publicizing of conflicts and accusations between the justice institutions" and "restrict(ing) opportunities whereby civil society organizations interfere in justice matters." End Note.)

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¶17. (C) Abu Sharar said he personally proposed to PM Fayyad a restructuring of the justice sector, to transfer authority for prisons from the Ministry of Interior to MoJ. "The Prime Minister," Abu Sharar claimed, "is convinced that these are useful ideas." Abu Sharar also advocated clarifying the status of the Attorney General (AG), who serves as Chief Prosecutor. "There are two schools of prosecutor relationship," he said. "In the Anglo-Saxon model, the AG is part of the executive. He reports to the Minister of Justice. In the Latin model, like France, the AG reports to the judicial sector. Here in Palestine we don't know who the Attorney General reports to. There is no legal framework -- it's a vacuum. And that leaves space for the Minister of Justice to try to expand his mandate."

Retirement Imminent

¶18. (C) Abu Sharar noted wistfully that his term as Chief Justice is scheduled to expire on November 28. (Note: In November, Abu Sharar will reach the mandatory retirement age of 70 for the second and possibly final time. On the first occasion -- in 2008 -- when his rivals in the MoJ and Attorney General's office produced documentation suggesting he had reached the age of 70, Abu Sharar countered with an alternate birth certificate declaring his age to be 69. End Note.) "When I leave," he concluded, "I will leave behind accomplishments I am proud of."

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